IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.406 of 2000.

Date of Decision :19th September, 2007.

State of H.P. …Appellant.

Versus:

Nand Lal. …Respondent.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 6th April, 2000 passed by Judicial Magistrate, Ist Class, Shimla in Criminal Case No.185-2 of 1999 titled as State of H.P. Vs. Nand Lal acquitting the accused of the charged offence.

On the complaint of Dasiya (PW-1), F.I.R.No.32/99 was registered with Police Station, Dhalli under Sections, 452, 336, 427, 504 and 506 I.P.C. alleging that the accused broken the main gate of the compound entered the Varandah and tried to break open the main door of the house belonging to the

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

complainant and threw the wooden pieces and stones. The accused also hurled abuses and upon hearing the cries of the complainant, neighbourers Anokhi Ram, Rajinder, Mohan Lal, Abhi Ram, Smt. Vidya Devi and Banti Devi reached at the spot and caught hold of the accused and put him on the floor of the house. The investigation was carried out by ASI. Sh. Bhagat Ram (PW-8) and the challan was filed in the court for trial.

After due compliance of Section 207 Cr.P.C., the accused was charged for an offence under Sections 452, 336, 427, 504 and 506 I.P.C. The accused pleaded not guilty and claimed trial.

In all, the prosecution examined eight witnesses. The statement of the accused under Section 313 Cr.P.C. was also recorded and the accused did not lead any defence evidence.

After examining the material on record, the Court below acquitted the accused on the ground that the prosecution had failed to prove its case beyond reasonable doubt inasmuch as the independent witnesses, namely Vidya Devi (PW-4) and Anokhi Ram (PW-6) had not supported and proved the case of the prosecution. The Court found that there are major contradictions in the statement of A.S.I. Sh. Bhagat Ram (PW-8) and Rajinder Mohan (PW-2) with regard to the timing of the arrival of the police at the place of alleged occurrence of offence.

Smt. Vidya Devi (PW-4) and Anokhi Ram (PW-6) independent witnesses have stated that they were not present on the spot at the time of the alleged occurrence of the incident. They have deposed that they had only heard from the complainant as to what had transpired between complainant and the accused. Therefore, their depositions cannot be relied upon being hearsay.

Complainant Dasiya (PW-1) has admitted that there are about 15-20 houses in close vicinity. Importantly, the persons who having witnessed the incident and were named in the F.I.R. have not been examined in the Court. Smt. Champa Devi (PW-5) has deposed that she did not hear any noise at the time of the alleged incident. She is the daughter-in-law of the complainant and is an interested witness.

As per the defence of the accused he has been falsely implicated as the complainant was not returning the amount borrowed from the accused. There is nothing on record to suggest much less prove as to what damage has been caused to the property of the complainant therefore the ingredients to constitute an offence under Section 427 are not made out at all. Keeping in view the totality of the circumstances, it cannot be said that the prosecution has proved the guilt of the accused beyond reasonable doubt.

The judgment of the court below is based on correct appreciation of fact and material on record and, therefore, there

is no need to interfere with the acquittal of the accused of the charged offence. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

September 19, 2007(R)